

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

YUICHI MIYAYAMA,  
Plaintiff

vs.

Quality Loan Service Corporation, a California  
Corporation; Ditech Financial LLC fka Green Tree  
Servicing LLC,  
Defendants

Case No.: 2:16-cv-00413-JAD-CWH

**Order Granting Motion to Dismiss and  
Denying Motion for Sanctions**

ECF Nos. 10, 22

Plaintiff Yuichi Miyayama purchased property encumbered by Ditech Financial LLC's first deed of trust and brings this action to stop Ditech from foreclosing on that interest. Miyayama claims that NRS 107.080 requires Ditech to provide him with notice of the sale, but it failed to do so, and that the notice lacks the details required by NRS 107.087(b). He seeks declarations that he has a right to cure the default and that Ditech lacks standing to foreclose because it no longer possesses both the promissory note and deed of trust.<sup>1</sup> Miyayama also sues for unjust enrichment, theorizing that, if Ditech forecloses and ousts him from the property, it will unfairly retain the benefit of his maintenance of the property since he bought it for \$10,000 in October 2014.<sup>2</sup>

Ditech and Quality Loan move to dismiss Miyayama's claims, arguing that they fail as a matter of law and fact, and Ditech also asks for sanctions for having to defend from this "meritless" lawsuit.<sup>3</sup> I find that Miyayama's legal theories for his NRS 107.080 and declaratory relief claims are unsound and that his NRS 107.087 claim is disproven by the recorded notices, so I dismiss these claims. But because I am not yet convinced that Miyayama can plead no set of facts that entitle him

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<sup>1</sup> ECF No. 1 at 9–16 (complaint).

<sup>2</sup> *Id.* at 13–14.

<sup>3</sup> ECF No. 10 (Ditech's motion); ECF No. 17 (Quality Loan Service's joinder); ECF No. 22 (motion for sanctions).

1 to relief on an NRS 107.080 theory, I dismiss that claim with leave to amend. I also find that  
2 plaintiff's unjust-enrichment claim is unripe as pled, and I dismiss it without prejudice to his ability  
3 to bring a new action for unjust enrichment if and when it ripens. I then deny Ditech's motion for  
4 sanctions.

### 5 **Background**

6 Urawee Kaithong purchased the home at 2343 La Puente Street, Las Vegas, Nevada in June  
7 2006 with a \$180,000 loan from First National Lending Services.<sup>4</sup> Kaithong signed a promissory  
8 note for the debt and executed a first deed of trust in favor of Mortgage Electronic Registration  
9 Systems, Inc. ("MERS") to secure it; the documents were recorded in 2006.<sup>5</sup> MERS assigned the  
10 deed of trust and the related note to BAC Home Loans Servicing in 2010,<sup>6</sup> and a second assignment  
11 in 2013 transferred the loan to Green Tree Servicing LLC, Ditech's predecessor in interest.<sup>7</sup> Trustee  
12 substitutions in 2010 and 2013 put Quality Loan Service Corporation in BAC's place as loan  
13 servicer.<sup>8</sup>

14 Kaithong defaulted on the mortgage and filed for Chapter 7 bankruptcy protection in August  
15 2012.<sup>9</sup> Kaithong's bankruptcy trustee moved to sell the property, and the bankruptcy court granted  
16 the request in part; the trustee was authorized to sell the property at auction—subject to all liens,  
17 encumbrances, and claims, which necessarily included Ditech's first deed of trust.<sup>10</sup> The property  
18 sold to H&N Properties, LLC, in April 2014 for \$2,500 under a Bankruptcy Trustee's Quitclaim  
19 Deed "without warranty, whether express or implied, in an 'as-is, where-is' condition and with any  
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21 <sup>4</sup> ECF No. 11-1 at 2 (original deed of trust). I take judicial notice of the recorded documents.

22 <sup>5</sup> *Id.*

23 <sup>6</sup> ECF No. 11-1 at 17 (assignment)

24 <sup>7</sup> ECF No. 11-1 at 25 (second assignment).

25 <sup>8</sup> ECF No. 11-1 at 19–22.

26 <sup>9</sup> ECF No. 11-1 at 28.

27 <sup>10</sup> ECF No. 11-3 at 11 (order granting motion to sell property).

1 faults” and “**SUBJECT TO ANY AND ALL CLAIMS, LIENS, AND OTHER**

2 **ENCUMBRANCES.**”<sup>11</sup> H&N sold its interest to Miyayama six months later for \$10,000.<sup>12</sup>

3 In July 2015, Quality Loan, as trustee, recorded a Notice of Breach and Default and Election  
4 to Cause Sale of Real Property Under Deed of Trust,<sup>13</sup> and the State of Nevada Foreclosure  
5 Mediation Program recorded a mediation certificate authorizing Ditech to proceed with the  
6 foreclosure process.<sup>14</sup> On January 5, 2016, Quality Loan recorded a Notice of Trustee’s Sale.<sup>15</sup>  
7 Miyayama filed this lawsuit in Nevada’s Eighth Judicial District Court and obtained an order  
8 temporarily restraining the sale<sup>16</sup> before Ditech removed the case to federal court.<sup>17</sup>

9 Miyayama alleges four claims: (1) the sale would violate NRS 107.080 because the statute  
10 requires notice to “all persons with an interest in the property, including plaintiff”<sup>18</sup>; (2) plaintiff is  
11 entitled to declarations that (a) he has a right to cure the default and (b) defendants lack standing to  
12 foreclose because they “do not possess both the promissory note and deed of trust”; (3) defendants  
13 have been unjustly enriched by “the substantial improvements” plaintiff has made to the property;  
14 and (4) defendants violated NRS 107.087 because they failed to include contact information for the  
15 trustee in the notice of sale.

16 Defendants move to dismiss all four claims, arguing that (1) NRS 107.080 does not require  
17 notice to Miyayama—it required notice to Kaithong *or* him; (2) his declaratory-relief theories are  
18 legally wrong; (3) his unjust-enrichment claim is at best unripe because there has been no foreclosure  
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20 <sup>11</sup> ECF No. 11-3 at 16 (emphasis original).

21 <sup>12</sup> ECF No. 11-3 at 22 (grant, bargain, and sale deed).

22 <sup>13</sup> ECF No. 11-3 at 26 (notice of default and election to sell).

23 <sup>14</sup> *Id.* at 34 (mediation certificate).

24 <sup>15</sup> ECF No. 20 at 5–7 (notice of sale).

25 <sup>16</sup> ECF No. 1 at 91 (TRO).

26 <sup>17</sup> ECF No. 1 (petition for removal).

27 <sup>18</sup> ECF No. 1 at 12 (emphasis removed).

1 sale yet; and (4) the notice of sale contains all the contact information that NRS 107.087 requires.<sup>19</sup>  
 2 Ditech also argues that plaintiff's claims are so meritless that plaintiff should be ordered to pay  
 3 Ditech's attorney's fees and costs.<sup>20</sup> Although I grant the motion to dismiss, I deny the motion for  
 4 sanctions.<sup>21</sup>

## 5 Discussion

### 6 I. Ditech's Motion to Dismiss

7 Federal Rule of Civil Procedure 8 requires every complaint to contain "[a] short and plain  
 8 statement of the claim showing that the pleader is entitled to relief."<sup>22</sup> While Rule 8 does not require  
 9 detailed factual allegations, the properly pled claim must contain enough facts to "state a claim to  
 10 relief that is plausible on its face."<sup>23</sup> This "demands more than an unadorned, the-defendant-  
 11 unlawfully-harmed-me accusation"; the facts alleged must raise the claim "above the speculative  
 12 level."<sup>24</sup> In other words, a complaint must make direct or inferential allegations about "all the  
 13 material elements necessary to sustain recovery under *some* viable legal theory."<sup>25</sup>

14 District courts employ a two-step approach when evaluating a complaint's sufficiency on a  
 15 Rule 12(b)(6) motion to dismiss. First, the court must accept as true all well-pled factual allegations  
 16 in the complaint, recognizing that legal conclusions are not entitled to the assumption of truth.<sup>26</sup>  
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19 <sup>19</sup> ECF No. 10.

20 <sup>20</sup> ECF No. 22.

21 <sup>21</sup> I find these motions suitable for resolution without oral argument. L.R. 78-1.

22 <sup>22</sup> Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*,  
 23 556 U.S. 662, 678–79 (2009).

24 <sup>23</sup> *Twombly*, 550 U.S. at 570.

25 <sup>24</sup> *Iqbal*, 556 U.S. at 678.

26 <sup>25</sup> *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106  
 27 (7th Cir. 1989)) (emphasis in original).

28 <sup>26</sup> *Iqbal*, 556 U.S. at 678–79.

1 Mere recitals of a claim's elements, supported only by conclusory statements, are insufficient.<sup>27</sup>  
 2 Second, the court must consider whether the well-pled factual allegations state a plausible claim for  
 3 relief.<sup>28</sup> A claim is facially plausible when the complaint alleges facts that allow the court to draw a  
 4 reasonable inference that the defendant is liable for the alleged misconduct.<sup>29</sup> A complaint that does  
 5 not permit the court to infer more than the mere possibility of misconduct has "alleged—but not  
 6 shown—that the pleader is entitled to relief," and it must be dismissed.<sup>30</sup>

7 **A. Plaintiff's first cause of action is based on a misreading of NRS 107.080.**

8 "The tenet that a court must accept as true all of the allegations contained in a complaint is  
 9 inapplicable to legal conclusions."<sup>31</sup> It is in the legal conclusions that plaintiff's first claim for relief  
 10 falters. Factually, Miyayama alleges that he was not sent the foreclosure notices required by NRS  
 11 107.080, and he avers that this statute "requires Defendants to provide notice of the default and  
 12 election to sell and/or notice of trustee sale to all persons with an interest in [the] property,  
 13 including" him.<sup>32</sup> But Miyayama's characterization of NRS 107.080 is not supported by the statute's  
 14 language, which requires that the notice of default be sent "to the grantor, **or** to the person who holds  
 15 the title of record on the date the notice of default and election to sell is recorded."<sup>33</sup> Under the plain  
 16 statutory language, the defendants were not required to send the notice to Miyayama; they could have  
 17 satisfied the statute by sending the notice to the grantor, Kaithong.<sup>34</sup> Because Miyayama bases this

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 19 <sup>27</sup> *Id.*

20 <sup>28</sup> *Id.* at 679.

21 <sup>29</sup> *Id.*

22 <sup>30</sup> *Twombly*, 550 U.S. at 570.

23 <sup>31</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

24 <sup>32</sup> ECF No. 1 at 12.

25 <sup>33</sup> Nev. Rev. Stat. § 107.080(3) (emphasis added).

26  
 27 <sup>34</sup> Plaintiff also offers policy arguments for why NRS 107.080(3) should be construed to require that  
 28 the notices to be provided to the current record title holder and why he should have a right to cure the  
 default, arguing that the statute violates his due-process rights. ECF No. 16 at 6-15. But NRS

1 claim on the legal theory that NRS 107.080 required defendants to send the notice to him, when it  
 2 could have also been satisfied by sending the notice to Kaithong, I dismiss this claim as legally  
 3 implausible. But I do without prejudice and with leave to amend this claim if Miyayama can  
 4 truthfully allege that the defendants sent the notice to *neither* him nor Kaithong.<sup>35</sup>

5 Defendants point out one more wrinkle in Miyayama's ability to plead a viable NRS  
 6 107.080-violation theory: the unresolved question of whether Miyayama even acquired valid title to  
 7 the property from H&N in the first place. The bankruptcy court's order authorizing the original  
 8 auction at which H&N acquired title states:

9 Upon payment of the Final Price, the Trustee will provide the § 363(b)  
 10 Buyer with a Declaration of Value and a Trustee's Quitclaim Deed  
 11 (together, the "Documents"); **these Documents, along with this**  
 12 **Order, must be recorded with Clark County Recorder's Office no**  
 13 **later than 14 days after delivery to the § 363(b) Buyer.** By  
 14 accepting the Documents, the § 363(b) Buyer agrees that it is solely  
 15 responsible for ensuring this timely recordation and for presenting  
 16 evidence of this timely recordation to the Trustee within 20 days of the  
 delivery. **Failure to timely record shall automatically void the §**  
**363(b) sale and the Documents delivered, meaning any later**  
**attempt to record them after the 14 days has expired shall provide**  
**the § 363(b) Buyer with no legal basis to successfully transfer the**  
**estate's interest in the Property.** . . . Additionally, failure to timely  
 record shall immediately permit the Trustee to resell the estate's  
 interest in the Property to someone [else].<sup>36</sup>

17 There remains a question of whether H&N satisfied this recording requirement. Although the  
 18 trustee's sale occurred on April 11, 2014, the deed was not recorded until 33 days later on May 14,  
 19 2014, so it is possible that the sale to H&N—and thus the downstream transfer to Miyayama—is  
 20 void.<sup>37</sup> The x factor here is when the documents were delivered to H&N. Miyayama has not pled  
 21 any facts about that process, and because I would have to consider evidence outside the record to  
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23 107.080(3) unambiguously identifies the parties entitled to notice in an alternative ("or")—not  
 24 conjunctive ("and") manner. It is not the job of the court to rewrite a plainly worded legislative  
 25 provision like this one. And plaintiff has not asserted a due-process claim in his complaint.

26 <sup>35</sup> *But see* note 54 *infra*.

27 <sup>36</sup> ECF No. 11-3 at 12 (emphasis added).

28 <sup>37</sup> ECF No. 11-3 at 16 (compare signature notarized on 4/11/14 with recording date of 5/14/14).

1 resolve that question, it is not one properly answered in this Rule 12(b)(6) proceeding. I thus do not  
2 find that the unanswered question about whether Miyayama's predecessor in interest H&N timely  
3 recorded its quitclaim deed from the bankruptcy trustee to be a pleading obstacle at this time.  
4 Plaintiff has pled that he acquired his interest in the property via deed from H&N, and at this stage in  
5 the litigation, that is enough to stave off dismissal based on a standing challenge.

6 Accordingly, this claim is dismissed with leave to amend it if Miyayama can plead true facts  
7 to show that neither he nor Kaithong received notice under NRS 107.080.

8 **B. The notices satisfy NRS 107.087.**

9 Jumping forward to Miyayama's fourth claim for relief, I find that it fails based on judicially  
10 noticed documents. For this claim, Miyayama alleges that defendants' notice of sale lacks the  
11 contact information required by NRS 107.087 to permit it go forward with the foreclosure.<sup>38</sup> But the  
12 notice of sale<sup>39</sup>—of which I take judicial notice because it was recorded in the public record—plainly  
13 contains the statutorily required information. NRS 107.087(1)(b)(2) requires the notice of sale to  
14 contain "The contact information of the trustee or the person conducting the foreclosure who is  
15 authorized to provide information relating to the foreclosure status of the property."<sup>40</sup> This notice of  
16 sale identifies Quality Loan Service Corporation and its address.<sup>41</sup> It also provides a phone number  
17 "For NON SALE information only," one for "Sale" information, and one for "Reinstatement." And  
18 it provides a website address for information about the sale. It thus does not appear that plaintiff can  
19 state a plausible claim under the NRS 107.087 theory advanced in his fourth cause of action.  
20 Because it does not appear that plaintiff could plead any set of true facts to support a claim on this  
21 theory, I dismiss his fourth cause of action with prejudice and without leave to amend.

22 **C. Plaintiff has not yet pled a plausible unjust-enrichment claim.**

23 In his third claim for relief, plaintiff alleges that defendants have been unjustly enriched

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24 <sup>38</sup> ECF No. 1 at 15.

25 <sup>39</sup> ECF No. 20 at 5.

26 <sup>40</sup> Nev. Rev. Stat. § 107.087(1)(b)(2).

27 <sup>41</sup> ECF No. 20 at 7.

1 because he “has spent a substantial amount of money improving the subject property” and because  
2 defendants’ “deed of trust has been paid in full through the original trustor’s mortgage insurance.”  
3 Neither of these facts states a plausible claim for unjust enrichment.

4 First, the fact that the original trustor’s mortgage insurance may have paid off the mortgage  
5 debt does not give Miyayama a claim for unjust enrichment. In *Topaz Mutual Company v.*  
6 *Marsh*—the case that plaintiff cites in his complaint for Nevada’s law of unjust enrichment—makes  
7 it clear that the primary element for this claim is “a benefit conferred on the defendant **by the**  
8 **plaintiff**.”<sup>42</sup> Because plaintiff affirmatively pleads that this benefit was conferred by the mortgage  
9 insurer, not him, he clearly cannot state an unjust enrichment claim based on that debt satisfaction.

10 Nor does Miyayama’s contention that he spent money maintaining and improving the  
11 property necessarily give rise to an unjust enrichment claim. The second and third elements of an  
12 unjust-enrichment claim are “appreciation by the defendant of [the] benefit [conferred by the  
13 plaintiff] and acceptance and retention by the defendant of [the] benefit.”<sup>43</sup> In *Topaz Mutual*, the  
14 Nevada Supreme Court noted that improvements on a property benefit the homeowner,<sup>44</sup> so I cannot  
15 presume that improvements that Miyayama made qualify as benefits to the defendants. Most  
16 importantly, Miyayama has not pled any facts to suggest that the defendants appreciated that these  
17 benefits had been conferred and that they accepted and retained them. The lack of these allegations  
18 is only compounded by the fact that the foreclosure sale has not yet transpired: even if Miyayama  
19 could plead facts to show benefit, appreciation, acceptance, and retention, he has not pled any facts  
20 to show that his unjust-enrichment claim is ripe. Accordingly, I dismiss Miyayama’s third claim for  
21 relief without prejudice to his ability to file a new action based on this claim if and when it becomes  
22 ripe.

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25 <sup>42</sup> *Topaz Mut. Co. v. Marsh*, 839 P.2d 606, 613 (Nev. 1992) (emphasis added); *see also* ECF No. 1 at  
26 14, ¶ 27 (quoting *Topaz Mutual*).

27 <sup>43</sup> *Topaz Mut.*, 839 P.2d at 613.

28 <sup>44</sup> *Id.*



**D. Plaintiff's declaratory-relief theories are legally unsound.**

Plaintiff's final claim is for declaratory relief. He offers two theories: (1) that the defendants lack standing to foreclose because they do not hold both the deed of trust and the note; and (2) that plaintiff is entitled to an opportunity to cure the default on the loan. Neither is supported by Nevada law.

The notion underlying the first theory—that separation of the note and deed of trust necessarily bars foreclosure—was rejected by the Nevada Supreme Court in *Edelstein v. Bank of New York Mellon* and *In re Monteirh*.<sup>45</sup> As the Court explained, “after being split, ‘the documents, and their respective interests, survive even if held by different parties.’”<sup>46</sup> “Foreclosure is not impossible if there is either a principal[-]agent relationship between the note holder and the mortgage holder, or the mortgage holder ‘otherwise has authority to foreclose in the note holder’s behalf.’”<sup>47</sup> Miyayama has not pled any facts to show the lack of principal-agent relationship necessary for foreclosure to be barred based on the separation of the note from the deed of trust. Accordingly, Miyayama has failed to state a justiciable controversy or “a legally protectable interest” in that controversy based on his separation-of-documents theory.<sup>48</sup>

Similarly deficient is plaintiff's theory that he is entitled to a right-to-cure declaration. Quoting *Title Insurance and Trust Company v. Chicago Title Insurance Company*, he alleges that “[u]nder Nevada law, a ‘purchaser of real estate . . . should have a reasonable opportunity to cure a

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<sup>45</sup> *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 259 (Nev. 2012); *In re Montierth*, 354 P.3d 648, 651 (Nev. 2015).

<sup>46</sup> *In re Montierth*, 354 P.3d at 650 (quoting *In re Phillips*, 491 B.R. 255, 275 (Bankr. D. Nev. 2013)).

<sup>47</sup> *Id.* (quoting Restatement (Third) of Prop.: Mortgages § 5.4 cmts. c & e (1997)).

<sup>48</sup> *See Cty. of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 961 P.2d 754, 756 (Nev. 1998) (“Declaratory relief is available only if: (1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination.”).

1 default or deficiency before the property may be sold by the trustee.”<sup>49</sup> But *Title Insurance and Trust*  
 2 *Company* is inapposite here. In it, the Nevada Supreme Court found that the “purchaser under a  
 3 recorded long-term real estate installment contract[] was entitled to notice of the trustee’s sale as a  
 4 ‘successor in interest’” under an earlier version of NRS 107.080(3), which required—prior to its  
 5 1989 amendment—notice to be provided to “the grantor or his successor in interest.”<sup>50</sup> The removal  
 6 of the successor-in-interest language from the statute eliminates the relevancy of *Title Insurance and*  
 7 *Trust Company* to the instant case, which is based on the amended version of the statute.<sup>51</sup> Plaintiff  
 8 has thus offered no viable legal right to cure the default, so this claim fails. And because it does not  
 9 appear to me that the plaintiff can plead any facts to cure the deficiencies in this declaratory-relief  
 10 claim, it is dismissed with prejudice and without leave to amend.

## 11 **II. Ditech’s Motion for Sanctions**

12 Finally, Ditech asks the court to “sanction Plaintiff and enter an award of fees and costs in  
 13 Ditech’s favor as the result of its having to engage counsel to defend against Plaintiff’s and  
 14 Plaintiff’s counsel’s repeated frivolous filings, and to discourage counsel from bringing such claims  
 15 again.”<sup>52</sup> NRS 18.010(2)(b) authorizes an award of attorney’s fees against litigants who bring  
 16 “frivolous or vexatious claims” because they “overburden limited judicial resources, hinder the  
 17 timely resolution of meritorious claims[,] and increase the costs of engaging in business and  
 18 providing professional services to the public.”<sup>53</sup> I do not find that sanctions are warranted here.  
 19 Although several of Miyayama’s claims are meritless, I cannot conclude based on this record that all  
 20 were “brought or maintained without reasonable ground or to harass” the defendants, as required for

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 22 <sup>49</sup> ECF No. 1 at 12–13, ¶ 19 (quoting *Title Insurance and Trust Company v. Chicago Title Insurance*  
*Company*, 634 P.2d 1216, 1218 (Nev. 1981)).

23 <sup>50</sup> *Title Ins. & Trust Co.*, 634 P.2d at 1218 & n.1 (quoting pre-1989 version of the statute).

24 <sup>51</sup> Even if the statute still required notice to the grantor’s successor in interest, Miyayama would not  
 25 qualify because he did not acquire his interest from Kaithong; he got it from H&N, who got it (if at  
 26 all) from the bankruptcy trustee.

27 <sup>52</sup> ECF No. 22 at 6.

28 <sup>53</sup> Nev. Rev. Stat. § 18.010(2)(b).

1 an award of fees under NRS 18.010. I am allowing Miyayama one opportunity to amend his NRS  
2 107.080 claim if he can truthfully plead that neither he nor Kaithong received the required notice, so  
3 it remains undecided whether any of Miyayama's claims can proceed.<sup>54</sup> I also am not persuaded that  
4 sanctions are appropriate on the basis of Ditech's footnoted argument that plaintiff's counsel has  
5 brought numerous actions alleging similar claims.<sup>55</sup> Ditech has not demonstrated that the cases were  
6 identical or have been dismissed based on the very same deficiencies I have found here.  
7 Accordingly, Ditech's motion for sanctions is denied.

### 8 **Conclusion**

9 Accordingly, IT IS HEREBY ORDERED that Ditech's motion to dismiss [ECF No. 10] is  
10 **GRANTED:**

- 11 • Plaintiff's claims for declaratory relief and violation of NRS 107.087 are dismissed  
12 with prejudice;
- 13 • His unjust-enrichment claim is dismissed without prejudice to Miyayama's ability to  
14 file a new action based on this claim if and when it becomes ripe; and
- 15 • His claim for violation of NRS 107.080 is dismissed **with leave to amend by**  
16 **February 2, 2017**, if he can truthfully plead that neither he nor the original grantor  
17 Kaithong received the statutorily required notice.

18 IT IS FURTHER ORDERED that Ditech's motion for sanctions [ECF No. 22] is **DENIED**.

19 DATED January 13, 2017.

20   
21 Jennifer A. Dorsey  
22 United States District Judge  
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24 <sup>54</sup> Ditech has offered the affidavit of Bounlet Louvan in support of its motion for sanctions. ECF No.  
25 23. In it, Louvan swears that the notice was mailed to Miyayama at two different locations and to  
26 the property itself. *Id.* at 2–3. The declarant also provided a document that purports to be an  
27 affidavit of mailing the notice of sale to Miyayama and to Kaithong. *See* ECF No. 23 at 10–11.  
28 Plaintiff is cautioned to consider that information carefully before filing an amended complaint in  
which he alleges that neither he nor Kaithong received the notice required by NRS 107.080.

<sup>55</sup> ECF No. 22 at 2, n.1.